THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROBERT D. FARRIS
and GEOFFREY M. HARTON

Appeal No. 1998-1345
Application 08/362,318[1]

HEARD: May 16, 2000

Before BARRETT, RUGGIERO, and BARRY, Administrative Patent Judges.

BARRETT, Administrative Patent Judge.

DECISION ON APPEAL

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[1] Application for patent filed December 22, 1994, entitled "Interactive Language Editing In A Network Based Video On Demand System."

This is a decision on appeal under 35 U.S.C. § 134 from the final rejection of claims 3 and 4.

We reverse.

BACKGROUND

The invention is directed to a system for eliminating undesirable language from video on demand or multimedia programming. As claimed in claim 3, which is directed to the embodiment of figure 15, an interactive programming object monitors the incoming text source (e.g., closed captioning) and blocks audio information from being played back when the words specified by the user appear. As claimed in claim 4, which is directed to the embodiment of figure 16, in the case where no parallel text source channel is available, voice recognition is used to identify words which are found offensive and to block the audio from being output when those words are detected.

Claim 3 is reproduced below.

> 3. In a network arrangement for the delivery and presentation of multimedia applications represented in an interactive decision list,
>
> the network arrangement including a network, one or more file servers connected to the network, at least one of said file servers containing multimedia assets and at least one of said file servers containing one or more

interactive program objects, at least one user location containing a set top box connected to the network and a process permitting a user to edit multimedia applications by invoking an interactive program object to perform the editing and configured for using interactive decision lists to activate retrieval of objects stored on the one or more file servers, for initiating playback of the objects retrieved and for initiating loading and execution of interactive program objects retrieved, all in a sequence corresponding to that represented on the interactive decision list; the network arrangement further including a text source of information which parallels audio information associated with said multimedia application,

the improvement comprising: an interactive program object which monitors the text source and blocks the audio information from being played back when words specified by the user appear.

The Examiner relies on the following prior art:

Abecassis 5,434,678 July 18, 1995
(filed January 11, 1993)
Clanton, III et al. (Clanton) 5,524,195 June 4, 1996
(filed March 4, 1994)

Claims 3 and 4 stand rejected under 35 U.S.C. § 103 as being unpatentable over Clanton and Abecassis.

We refer to the Final Rejection (Paper No. 7) (pages referred to as "FR__") and the Examiner's Answer (Paper No. 14) (pages referred to as "EA__") for a statement of the

Examiner's position and to the Appeal Brief (Paper No. 12) (pages referred to as "Br__") for a statement of Appellants' arguments thereagainst.

OPINION

The Examiner finds that Clanton discloses the subject matter of claims 3 and 4 except for claimed improvements (FR4). Appellants argue that the Examiner's mapping of the claim limitations onto Clanton is in error (Br6-8) and "[t]hus, Clanton does not even disclose the environment claimed in this application and certainly does not disclose the elimination of audio portions which might be found offensive" (Br8).

We agree with Appellants' arguments regarding the deficiencies of Clanton. However, since claims 3 and 4 are in Jepson format, the preambles are impliedly admitted to be prior art.[2] Pentec, Inc. v. Graphic Controls Corp., 776 F.2d 309, 315, 227 USPQ 766, 770 (Fed. Cir. 1985); Reading & Bates Construction Co. v. Baker Energy Resources Corp., 748 F.2d 645, 649-50, 223 USPQ 1168, 1172 (Fed. Cir. 1984);

[2] It is not known why the Examiner did not rely on the Jepson claim format as admitted prior art as a starting point in the patentability analysis.

In re Ehrreich, 590 F.2d 902, 909-10, 200 USPQ 504, 510 (CCPA 1979). "Consequently, the inventive portion of the claim must lie in the clause beginning: 'the improvement comprising.' See In re Simmons, 50 C.C.P.A. 990, 312 F.2d 821, 824 [136 USPQ 450, 451] (1963)." Ethicon Endo-Surgery Inc. v. United States Surgical Corp., 93 F.3d 1572, 1577, 40 USPQ2d 1019, 1022-23 (Fed. Cir. 1996). Therefore, regardless of the problems with Clanton, it seems that the relevant issue is whether Abecassis discloses or suggests the claimed improvements.

The Examiner finds (FR5): "Abecassis provides a teaching of automated selected retrieval of video segments of a video program that are responsive to a viewer's preestablished video content preferences, wherein the viewer [sic, viewers] enter their selections on a screen as shown in Fig. 4, and at col. 11, lines 5 - 27. In the invention of Abecassis, undesired audio or video is blocked by skipping over those video segments [see col. 11, lines 20 - 27]."

Appellants argue that Abecassis requires pre-classifying and encoding of each segment of an audio visual program as to content, whereas the claimed invention does not require

pre-classification (Br9). Appellants argue (Br10) that Abecassis detects program categories and does not detect words to be blocked by monitoring a text source of information which parallels the audio information of the multimedia application (claim 3) or by speech recognition on the audio information of the multimedia application (claim 4).

The Examiner responds that "[i]n detecting the program segments and their corresponding categories, particular words are being detected because in order to determine the profanity level for a particular segment, the words within the segment must first be detected" (EA5).

We agree with Appellants that Abecassis does not perform the functions of the improvement clauses in claims 3 and 4. We assume, for the purposes of discussion, that checking the box for "None" corresponding to the category of "Profanity" in figure 4 broadly constitutes "words specified by the user"; i.e., the words specified by the user are words that fall into the category of "Profanity" rather than specified individual words.

The segments in Abecassis are manually pre-classified by a human as to the various program categories; that is, a human

determines whether the segment should be rated as "None," "Implied," "Explicit," or "Graphic" for each category and these ratings are stored in a content descriptive structure (col. 6, lines 27-37) which is used in deciding whether to omit or add segments. Thus, any "detection" is done by a human. Claims 3 and 4 require that the detection and blocking be performed by an "interactive program object," which excludes performance by a human. Moreover, the claimed detection is done by the interactive program object monitoring the text source (claim 3) or performing speech recognition on the audio information (claim 4), which is not performed by Abecassis. Because the claimed invention monitors the text source or performs speech recognition, the detection can be performed on broadcast information or video on demand, whereas Abecassis requires the segments with objectionable language to be pre-classified by a human, which means that Abecassis can only work on pre-classified material. While the same ultimate result of eliminating objectionable language may be achieved in Abecassis (it is questionable whether omitting a segment with objectionable language in Abecassis meets the limitation of blocking the audio information since Abecassis eliminates

the audio and video and does not just "block[] the audio information from being played back"), the result is performed in a different way by the claimed invention which operates directly on the text source or audio information. For these reasons, we conclude that the Examiner has failed to establish a prima facie case of obviousness. The rejection of claims 3 and 4 is reversed.

REVERSED

LEE E. BARRETT Administrative Patent Judge	)	
JOSEPH F. RUGGIERO Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
LANCE LEONARD BARRY Administrative Patent Judge	)	

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